Filed 3/30/10 Marriage of Kevin and Renee H. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of KEVIN and RENEE H.	
KEVIN H., Appellant, v. RENEE H., Respondent.	E046739 (Super.Ct.No. RID199649) OPINION

APPEAL from the Superior Court of Riverside County. Elisabeth Sichel and Becky Dugan, Judges. Affirmed.

Kevin H., in pro. per., for Appellant.

No appearance for Respondent.

Appellant Kevin H. (father) appeals from an order of the family law court declaring him a vexatious litigant and requiring him to submit his papers for court approval before filing. In addition, he requests reversal of the court's child custody orders. Father failed to file a timely notice of appeal from the custody orders of which he

complains. As to the vexatious litigant ruling, father has failed to provide an appellate record adequate for review. He has also failed to meet the constitutional standard, demonstrating a miscarriage of justice, required to warrant reversal. (Cal. Const., art. VI, § 13 [no judgment shall be set aside for evidentiary, pleading or procedural error unless the error resulted in a miscarriage of justice].) We therefore affirm.

FACTS AND PROCEDURAL HISTORY

The facts underlying the case are difficult to glean; father has failed to include many salient documents in the record on appeal.

Nevertheless, it appears that father and respondent Renee H. (mother) were married in 1985. There are two children of the marriage, a natural son, D.H., and an adopted son, J.G. Both sons suffer from mental or emotional disorders. D.H., the older son, is autistic, and J.G., the younger child, has attention deficit disorder and other cognitive or emotional limitations.

Father is employed as a firefighter, and mother is a respiratory therapist. Father has long been an enthusiastic outdoorsman, and hunts waterfowl each season. Father apparently owns several firearms and normally keeps them in a locked vault.

In February 2003, mother filed a petition for dissolution of the marriage. Mother also applied for domestic violence restraining orders, precipitated by an alleged incident or incidents that happened at about the same time, concerning some problem or problems revolving around father's guns. The parties' versions of the events differ significantly; from the beginning, father has maintained that mother's version was false. Father's indignation over mother's assertedly false accusations and evidence in her initial

application for restraining orders is the common thread running through almost all the proceedings since that time.

Mother's application for restraining orders was based on allegations that father had left a gun or guns out where the children could access them, that father had left one particular rifle on a counter or table and had either pointed the gun toward mother, or had refused her request to move the rifle so it did not point at her, and on father's alleged statement that he was "'going to kill someone.'" Part of mother's evidence apparently consisted of a series of photographs, purportedly depicting guns left in various locations which were accessible to the minor children. Father disputed the authenticity of the photographs; he asserted that they did not show multiple guns, but the same gun moved from one place to another. In other words, father accused mother of staging the photographs she presented in support of her motion. He also vehemently denied threatening to kill anyone.

The court issued temporary restraining orders, restraining father from contacting, attacking, threatening, stalking, or surveilling mother or the children. Father was ordered to move from the family home, and was ordered not to remove any guns. Mother was to collect all the guns and turn them in to law enforcement officers; father was ordered to give mother the key to the gun vault to enable her to retrieve and turn in all the guns. The court informed father that, if the firearm relinquishment order were not made permanent, his guns would be returned to him.

After the issuance of temporary restraining orders in 2003, father obtained counsel to oppose the issuance of permanent restraining orders. The court found mother more

credible than father on the issue, e.g., of whether any threat to kill had been made.[1] The court therefore issued permanent restraining orders on April 7, 2003, with the same restrictions that the temporary orders had imposed.

Father again obtained new counsel and apparently filed for reconsideration of the restraining orders. The moving papers are not included in the record on appeal, but mother evidently filed a response, and father filed a reply declaration on August 6, 2003. Father does include his reply declaration in the record on appeal; it consists of a lengthy, rambling discourse, accusing mother of mental illness, habitual lying, and domestic violence, as well as having fabricated the photographs in support of her motion for restraining orders.

On August 12, 2003, the motion for reconsideration was apparently heard, and resulted in a stipulation between the parties. The parties stipulated that the restraining orders issued on April 7, 2003, "shall be deemed non-CLETS [California Law Enforcement Telecommunication System] orders & instead become stay away orders. [Mother] reserves the right to re-issue CLETS orders, subject to proof." In addition, father was to pay $1,244 per month for child support. Father was entitled to reasonable telephonic contact with the children. The parties agreed to an exchange point for visitation. The stipulation also provided that "all other issues are reserved until further order of the court," and father "shall be entitled to retrieve his hunting weapons." The gist of the stipulation as to the restraining orders was that the restraining orders would

[1] Though father adamantly insisted that he had never made any such statement that he intended "to kill somebody," apparently the younger son did hear father make such a remark, though he interpreted it as a joke rather than a serious statement.

remain in place, but would not be registered on the statewide law enforcement computer system.

A few days after the stipulation of August 12, 2003, father again changed attorneys, and his new counsel filed another motion for reconsideration.

On October 16, 2003, the court heard the motion to reconsider the stipulation. Father insisted that he had felt coerced by his own attorney into signing the stipulation. The court took the matter under submission, and on December 3, 2003, issued a ruling setting aside both the stipulation and the underlying restraining orders.[2]

On December 15, 2003, the parties returned for the review of the psychologist's evaluation of the parties under Evidence Code section 730 (hereafter section 730), and custody and visitation issues. Mother's counsel indicated that a continuance might be preferable. Inasmuch as a rehearing on permanent restraining orders was scheduled for December 31, 2003, any such orders might affect the visitation orders that were to be

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[2] The court found that neither the motion to reconsider the April 7 orders, nor the motion to reconsider the August 12 stipulation, was timely pursuant to Code of Civil Procedure section 1008. Father also relied on Code of Civil Procedure sections 473 and 663 as alternative bases for relief. The claim for relief under Code of Civil Procedure section 663 was based on alleged coercion or undue influence exerted by father's attorney at the stipulation proceeding. The court found Code of Civil Procedure section 663 inapplicable: "The stipulation was neither a finding of fact nor a verdict, nor has [father] demonstrated any of the applicable grounds." However, the court was inclined to grant relief under Code of Civil Procedure section 473 to set aside the stipulation. "The law favors hearing cases on the merits and clearly non-CLETS orders are disfavored. The stipulation . . . should be set aside." That would leave father under the restraint of the CLETS orders; the court "set[] aside those orders under CCP 473 and set[] the matter for hearing on December 31, 2003 . . . . [¶] Based upon the grounds of mistake and excusable neglect, [father] has raised new information that mandates a new hearing in the interests of justice."

reviewed at the present hearing. The court continued the matter to December 31, 2003, to be heard at the same time as the rehearing on the restraining orders.

On December 31, 2003, the court heard renewed proceedings on the restraining orders. The court clarified that its ruling setting aside the August 12 stipulation merely set aside the non-CLETS order, not the additional matters in the stipulation. "The . . . contents of the motion was simply to set aside the restraining order and that was what was done." The additional stipulated orders (e.g., child support, visitation exchange) remained unchanged.

Mother's counsel argued that the restraining orders should be reinstated. Mother reiterated, as she had in her original application, that there was at least one instance in which one of the guns was pointed toward her, and father refused to turn it away despite her request. Mother admitted that she may have mistaken the date of the incident; father had apparently filed a declaration averring that the gun pointing incident could not have happened on the day mother had asserted, because father had been at work that day. Nevertheless, mother did not rely solely on a single gun-pointing incident, as to which she could easily have mistaken the day, but also "a plethora of acts and actions on behalf of [father] that precipitated her bringing this matter before the Court to ask for restraining orders."

Indeed, according to mother, father continued to intimidate and threaten her. When the court had, on December 3, 2003, issued its ruling setting aside the stipulation and restraining orders, father apparently "showed up at the residence, barged into the residence, took the kids, and he said, 'I'm taking the kids for visitation,' without any

advance notice. And stated to her, 'I've given you three chances to come back to me and now you're going to pay.'" Father also allegedly told mother, "'I'm moving back in. I'm moving in Sunday. I'm bringing my guns.'" Father also telephoned mother numerous times per day.

Even while the restraining orders were in effect, father had not abided by them. On the very day the orders were initially issued, father was requested to wait in the courtroom until mother and her counsel had left the building, but he did not do so. Even though the court had just ordered him to stay 100 yards away from mother, he insisted on going into the same elevator with mother as she left the courthouse. Thereafter, he effectively stalked her. He calculatedly parked his motor home just 100 yards away from mother's home and posted large signs saying, "'I love you. Please come back to me.'" Although the orders forbade father from direct or indirect communication with mother, he contrived, after she did not respond to the signs on the motor home, to have a third party send her a cassette tape recording from him. He also called Child Protective Services (CPS) to report alleged misconduct by mother.

As to visitation, the court had earlier adopted the psychologist's recommendations from the section 730 report as temporary orders. Among other things, apparently, the psychologist had recommended expanded visitation for father, but something like a four-day visit was to be conditioned upon father's having completed at least 15 sessions of counseling.[3] However, father had simply taken the children on December 19, and not returned them on December 21, as he should have done. He also did not meet mother at

[3] Dr. Lampel's section 730 evaluation is not included in the record on appeal.

the ordered exchange point. The following day, father allegedly went to the family home, waited by the back gate and telephoned mother "not once but twice, three, four, five times continuing a course of intimidation." The maternal grandmother was visiting during the December holidays and witnessed father's threat to mother (i.e., "'You're going to pay'"). Father allegedly threatened the grandmother also, saying, "'When I come back, you better not be here.'" Mother's counsel noted that the stipulation of August 12 had allowed father the return of his hunting weapons. Mother's counsel was in fear for her safety.

Father denied making any threats, and denied saying that he intended to move back into the house. He did state, however, that he "had . . . promised my boys [that the] first chance I could be home, I would." Father's counsel urged that mother's conduct also had been obstructive, and that she had called the police unnecessarily to complain of father. Father's counsel had urged him to return the children from visitation as he was supposed to, but father worried, "'I'm very reluctant to do so. She has brought witnesses in here. She has her mother in here. I know I'm going to be set up.'"

The court found that domestic violence had occurred and that father was the perpetrator, "basically it's harassment." The court reissued the domestic violence restraining order, which would be in place for three years. Father burst out, "No. No. That can't be." The court acknowledged that mother also had credibility issues, "but there are some actions by [father] he admitted to the Court that lead me to conclude he is harassing [mother]. [¶] I don't think he threatened her with the guns as was outlined in the original declarations, at least explicitly, but I do find that he is harassing her. I'm

issuing orders on that basis." The court also expressly stated that it believed father's assertion that he had had the gun in the kitchen for cleaning, and it did not believe mother's version of those events. The court noted, however, that father had "come to the house on more than one occasion. When there was a restraining order in effect he parked [a vehicle] outside with a sign on it. [¶] . . . [¶] He calls her repeatedly. He has come to the house without notice to her when he had been removed from the residence even though the order had been dissolved and made arrangements with the children . . . to let him in. He threaten[ed] to keep the kids, you know, on and on. [¶] . . . [¶] I also have considered the incident that occurred in the courthouse where he was told to remain in the courtroom and he did not. That's another incident." The court ordered father not to harass, threaten, stalk or disturb mother, and he was not to contact mother except for brief and peaceful contact as required for court-ordered visitation. Father was to stay 100 yards away from mother, and was excluded from the residence. Father was ordered not to own, possess, have, buy, "or any other way get a gun or firearm." The court ordered visitation exchanges to be made at a local police station. Father was awarded three connected telephone calls to the children each week, at reasonable times between 8:00 a.m. and 9:00 p.m.

Mother apparently filed the reissued CLETS restraining orders on January 8, 2004, and father filed an order to show cause (OSC) for reconsideration on January 9, 2004. Neither of these documents is included in the record on appeal. The OSC for reconsideration was heard on February 24, 2004. The court found that father had presented no basis for reconsideration, other than continued disagreement with the ruling.

On March 8, 2004, father apparently filed an OSC for ex parte orders to modify custody, visitation and child support. Father's moving papers are not included in the record on appeal. The court denied the request for ex parte orders, saying "I frankly could not see anything that rose to the level of an emergency." Father's counsel indicated that he had obtained audio tape recordings of the children, in which the children purportedly "are crying to the dad that, you know, that she's been lying all the time, that she's coached them, that she's endangering their lives," or saying that mother had "endangered us, that she's made us pose with the rifle."

As to the question of attorney fees as sanctions, father's counsel urged that the court reserve ruling, "just in case, when the truth becomes clear to the Court that all these allegations have been made up and have been fabricated. That my client should not be punished for trying to defend his good name." He urged that, "[W]e feel that there are certain facts, and especially the facts that will be reviewed by this court with respect to the tapes, that would totally exonerate my client. That he has not put the gun where she said. That he had not said those words."

The court responded that, "we've been over and over this. You brought up the same point over and over again . . . . The Court has made a ruling. I have not received any notice of appeal or writ . . . . I'm not interested in hearing the same things that have been put before the court previously and found to be true or not true argued again. We're not going to endlessly rehash the restraining order . . . . [¶] . . . [¶] I have ruled for rightly or wrongly. Your remedy lies elsewhere. If the appeals court tells me I'm wrong, I will accept that. . . ."

The court ordered Dr. Lampel to update the section 730 evaluation report, in light of the delay since the initial report, and to give her the opportunity to assess the tapes of the children. The court awarded sanctions in favor of mother in the amount of $900.

Father apparently filed a notice of appeal from the court's orders of February 24, 2004 (denying father's motion for reconsideration of the reissued restraining orders), but this court dismissed that appeal on May 3, 2004.

On May 10, 2004, father filed a new OSC for ex parte modification of custody and visitation orders. The moving papers are not provided in the record on appeal, but apparently they included a request to the court to recuse itself from hearing the matter. The court denied the recusal motion. The parties also brought to the court's attention a situation involving D.H. He had apparently refused to go to school unless and until mother allowed father to return home. D.H. was upset, and made crying telephone calls to father. D.H. told mother that he wanted to live with father, and then put his belongings in a wheelbarrow and left the home. Father picked him up and took him to school, and kept D.H. with him for a day or so until the court hearing. After an immediate referral to emergency mediation, the court received the mediator's recommendations and returned D.H. to mother. Father's counsel warned that, "if [D.H.] is to go back to his mother, remember who has endangered him initially by fabricating the shot gun [photographs]." At that time, the court appointed independent counsel for the children. The court urged the parties to put aside their personal differences and not to alienate the children. Father protested that he was not involving the children in the proceedings, but blurted out, "The evidence is my kids were endangered by a shot gun with their mother."

At the continued custody and visitation hearing, on May 12, 2004, father's counsel complained that father had not been interviewed by the mediator two days earlier. Father had averred in a declaration[4] that mother had locked the D.H. out of the house, but father was not interviewed during mediation. Father complained of the section 730 evaluation of Dr. Lampel. Admittedly, father had told the evaluator "that she is a raging incompetent, and she would not know the best interest of the children if it would poke her between the eyes. [Father] had addressed those comments to her in correspondence, certified correspondence, addressing her [by her first name]." Insinuating that father's written insults had inflamed bias in the evaluator, counsel went on, "lo[] and behold, it is just one sided. It does not show what [the older child] really wants. It shows that it is the influence of [father] on [D.H.] when, in fact, [father] has a limited time with his children. . . . The restraining order that was put on him was based and predicated on a lie. . . . [Mother] submitted a perjurious [financial] declaration in which she did not claim the income of the social security [i.e., disability payments received for J.G.]. . . . [¶] So here is a restraining order that tattered my client with a presumption of fitness, as the Court knows, from the get go, and, as I understand, this judge does not want to revisit. . . . [¶] [W]e're only asking for some fairness. . . . [Father] stands defiant, and he knows this is the state trying to shovel role power [*sic*] down his throat. [¶] And he says, I will fight this. [¶] And he wants a re-evaluation from a neutral psychologist."

The court inquired, "to focus you on the matter at hand, the question before the court at the moment is whether or not an emergency change of custody is necessary and

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[4] That declaration is not provided in the record before this court.

in the children's best interest." Father argued that it was, because the "evaluator stated the poor hygiene, the poor care that [D.H.] has been receiving from his mother. That this depression cannot, by any standard, be pinned to [father]. . . . [¶] In addition, . . . we have the judge to look at taking away from him 130 days of outdoor fun with his father."

The court inquired, "what is the present emergency? . . . [I]n order to obtain emergency relief, there needs to be an emergency that immediately affects the health, safety or welfare of the minor child. And what I'm hearing is much of the same arguments that have been made previously and considered by the court previously. From what I gather from the declaration is the emergency was, . . . that [D.H.] had apparently been kicked out of the house and trumbled off to dad. . . . [¶] Is there any emergency other than that before the court today?"

Father's counsel indicated that D.H. primarily expressed concern about J.G.: "[Mother] gets very violent. She has beat on all of us, and [J.G.] was home alone. He's very tiny. At ten years old, he rides on my shoulders." Father testified that D.H. told him "the reason he was doing all this is that, the day before he told me, is he wanted me home. He got tired of . . . the way they're being used by their mom." Father attempted to enter into evidence a document purportedly written by D.H. Minors' counsel objected that she had not had an opportunity to review the document: "I'm reluctant to have something that is purportedly written by my client received by the court, when I have not had the opportunity to meet him yet."

Father's counsel withdrew his request for ex parte relief to allow the minors' attorney a chance to meet with her clients. He also asked for "another evaluation before

another psychologist, . . . [because father] has been intransigent and rude, and said some things that he should not have said to Dr. Lampel." The court denied that request, as not properly before the court at that time. Father was free to make a separate motion on that issue.

On June 22, 2004, the court considered the continued OSC for modification of custody and visitation. In the interim, father's counsel had also filed a motion to set aside the restraining orders, and set that matter for hearing at the same time as the custody and visitation proceeding. The court took under submission the request to set aside the restraining orders.

As to the custody and visitation issues, minors' counsel presented an oral report. She had interviewed mother, father and the children, and had reviewed numerous documents, including the section 730 evaluation. Minors' counsel was concerned that J.G. was "in crisis." Evidently, the stress resulting from the dissolution was affecting him severely, and he had begun self-mutilation because of severe depression. D.H. was very angry with his mother. Father was also very angry at mother. D.H. had integrated in himself the unfairness that he believed had been done to his father. D.H.'s anger, in turn, affected J.G. Minors' counsel recommended that D.H., who was now 17, be shared alternate weeks between the two parents. J.G. would continue to visit father on some weekends, particularly coordinating with weeks that his brother was with father.

Mother's counsel represented to the court that the tape recorded conversations of father with D.H. showed that, "[Yes, D.H.] is very, very angry. But if the Court were able to listen to those tapes, . . . you'll realize why he's angry[, b]ecause dad calls mom a

liar, dad says he's frustrated with the system because the Court believes mom and its of no value[. H]e discusses the case with the children. He is implanting these seeds of discontent, malcontent and angriness in these children."

Father's counsel responded, "We have made it clear to the Court that the Court has been misled, that most of the evidence before the Court as the PRO and the TRO and these issues that . . . made this utmost fear so poisonous for the family has been instigated by [mother]."

Minors' counsel confirmed that, in the tape recorded conversations of father and D.H., father's conduct was inappropriate: "Discussing the history of the case, commenting on mother not being truthful to the Court, . . . [b]asically protesting the custody orders and the kick out order for dad by refusing . . . to go to school." When D.H. protested to father that he would not go to school unless father were allowed to return home, father did not respond appropriately, i.e., he did not cut off that manipulation, and simply tell D.H. to go to school.

The court identified the key issue: "to what degree [father] is willing to comply with Court orders, to what degree [father] is willing to have appropriate boundaries with his children and understand that the children are not merely an extension of his feelings, thoughts and so forth about the divorce or about the domestic violence restraining order and the court process and this whole situation. [¶] Because unless I can have some belief that he can be appropriate with the children, then I have to curtail his contact, because he won't obey court orders so far, and he won't be appropriate with the children."

Father's attorney argued that father had been progressing in therapy on his anger, and noted that father had been able to meet with minors' counsel without any "confrontational behavior or any anger." Thus, father "is at this time resigned, and I say resigned with an underline, so bold, to have the matter tossed out at the Court and to the children's counsel to do what's right. . . . I play the role of counselor, too, with [father] . . . and there is great anger in him."

The court noted, "One can see that from his demeanor in court." Father stated directly to the court that, "My efforts have been in trying to relieve the burden that's been saddled of both boys. I haven't gone against any court orders. I haven't directly discussed this case with them. I'm getting across the board from day one falsely accused. [¶] . . . [¶] I'm trying. The boys come to me."

The court observed, "Why would minor's counsel tell me that is the case with respect to the reported [*sic*: recorded] phone conversation?" Father replied, "I listened to the tape. I didn't discuss any particulars out of this case. Those boys . . . keep apologizing to me for keeping us apart, getting me kicked out of their home . . . . I'm trying to say I don't blame you boys. I'm saying don't talk about it. [¶] [Mother] has screamed at me . . . what do you mean you're going to tell them the truth when this is over. I don't think I need to explain that. That's what I tell them and they've told her. They feel guilty."

The court remarked, "even what you told me today is exactly what I'm talking about, telling them that you're going to tell them the truth when this is all over. . . . [¶] . . . [¶] [T]hat's harmful to them . . . [¶] . . . [¶] [b]ecause what you're implying to

them is that they're not being told the truth presently and that they should distrust their mother and only trust you as being the only source of truth in their lives. And that's exactly the kind of comments to them which are certainly not in the spirit of the court order and, quite regardless of that, are downright harmful to your children." Father "agree[d] completely," with the court, but excused his conduct by saying, "They have been dealing with their mother just like the documentation I supplied [to] the court for years."[5]

After these inquiries and exchanges, the court adopted the recommendations of minors' counsel to divide custody of D.H., with coordinating weekend visitation by J.G. The court urged father to continue beyond the four sessions of therapy he had begun. "I can't cover every possible permutation of behavior that might arise. And what I've seen in [father] is unless I make a very specific concrete order, he's going to do something that violates the spirit of the order but not the actual wording. [¶] . . . [¶] . . . I can't outline each and every point I need to see at this point in excruciating detail. [¶] What I want to see is that [J.G. is] not mutilating himself anymore, that [he] is not in crisis, that [D.H.] is able to deal appropriately with mom and that [D.H.'s] behavior is modified and [father] does not continue to undermine mom and continues to support her in her issues of [D.H.] not going to school and [father] is not inappropriate with respect to his comments about mom and the case."

[5] This "documentation" evidently consisted of matters like father's detailed litany of mother's "lies" annotated to the adoption social study.

The June 22 hearing concluded with father's insistent request to present a statement to the court. Father accused mother's attorney of frivolous actions, particularly noting an alleged 81 instances in the transcript of the February 24, 2004, hearing of "false accusations and zero substantiation." Father stated that he had obtained both marriage counselors he and mother had seen, and spent a great deal of time researching medical specialists for mother's "diagnosis of herself." Father gave his okay to mother's vacation with the children, but she opposed his "important day" in his and D.H.'s life.[6] Father claimed to have endured "literally hundreds of false accusations" during many years of the marriage, but "never heard a reaction to the positive." Father accused mother of instability and of threatening him. He asserted, "More than ten times I've stated the leading factor in child abuse is it going to be pursued here. [Mother] has told many of being abused throughout childhood, and I've witnessed it. So dysfunctional was that family of hers half were not allowed in our home." The apparent logic was that, (1) the single most correlative or predictive factor in a parent abusing a child was the history of abuse in the parent's own background, (2) mother was abused as a child, and therefore, (3) mother, not father, abused these children.

Father reiterated, "Substantiation is already before the Court of the following. [Mother] committed child endangerment with a firearm.[7] [Mother] committed perjury

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[6] This "most important day" apparently referred to taking D.H. to shoot his first goose.

[7] This apparently refers, once again, to the allegation that mother staged the photographs of the gun or guns around the house, with which she had supported her original application for restraining orders.

under oath. [Mother's] committed fraud against this court. [Mother's] committed child abuse emotionally." Father accused mother of exaggerating the children's disabilities out of greed, and falsely representing that J.G. was disabled so as to receive social security payments. Father insisted that D.H., although autistic, had maintained his grade level in school. J.G. allegedly complained to father, "make mommy stop telling people I'm sick."

Father blamed mother for giving "an eight-year-old a very sharp knife," and "[w]ithin 24 hours this child was in a hospital emergency room. After much blood loss, a tetanus shot and seven stitches, he has a vicious scar to be carried for life." Father accused mother of beating him and the children and having them arrested. Father has "a list of over 30 acts, statements of her that are harassment in the least. Both boys want to be with dad now. Taken from them 130 days per year in the great outdoors with 80 days a year making and fixing things in the barn, learning tools with dad. Now the time is spent sleeping until noon, overeating, internet and video games, internet pornography supported by the expert Dr. Lampel. [¶] [The boys] know who lies and who doesn't."

On August 11, 2004, the court apparently ruled on the submitted motion to set aside the restraining orders. The minute order itself is not included in the record on appeal, but the court apparently denied the motion.

In December 2004, father, in propria persona, apparently filed his own request for domestic violence restraining orders against mother. Mother appears to have filed a responsive declaration in January 2005. It is unclear what disposition, if any, was made of this application. Father's attorney filed an OSC for an ex parte modification of

custody and visitation in February 2005. On March 9, 2005, father filed a substitution of attorney, relieving his former counsel and substituting himself in propria persona.

The custody and visitation matters were referred to mediation. On March 15, 2005, father made a new application for restraining orders against mother, and this was denied. The court evidently made some orders on the OSC to modify custody and visitation in May 2005.[8]

On June 17, 2005, father again moved for modification of custody and support. Father's moving papers requested modification to the amount being attached automatically from his wages, as D.H. had turned 18 and was living full time with father. Father also requested that the court "modify unlawful restraining order," and that it "modify household possessions decision of 6/3/05." He also wanted reimbursement from mother for $30,000 in attorney fees he had paid to his former attorney during the proceedings.

Father averred that the attachment of his wages had not been modified since D.H. had turned 18 two months earlier: "Following this courts ruling about June 3, that [mother] pay me child support, this deduction continues. This despite my oldest son turning 18 years old last April 3 and living with me 100% of the time. I have been allowed back to the home fraudulently taken from me 2 1/2 years ago, and ordered to

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[8] Father has included in his Appellant's Appendix a memorandum from Wayne Brown (whose role is not identified, but perhaps a mediator) reporting the results of an interview with J.G. The child appeared depressed and stated that he was unhappy living with mother. If the child were to live with father, he would not want to see mother "because 'she is mean.'" Brown's memorandum states that he most likely would request a change of custody to father, based on J.G.'s condition that day. The date May 9, 2005, is handwritten on this memorandum, without any authentication of that annotation.

meet various living expenses. . . . [¶] As told to my former attorney 18 months ago I will not pay another to abuse and endanger my children. I wish this attachment to stop immediately. As restitution I request the return of all funds deducted from my salary beginning 12/12/03," an amount of some $23,292. Father also requested "attorney fees and costs I have paid to be paid by [mother] and her former counsel Mr. Deller. I had not mentioned Mr. Deller specifically at that time. In accompany are excerpts from the transcripts of my case showing multiple violations of the Rules of Professional Conduct . . . . About 80% of the courts statement of decision is based on Mr. Dellers lies." As to the division of home furnishings, father complained that "every request of [mother] was approved." Some of father's possessions were allegedly removed or damaged, and father complained of the condition of things inside the home. He requested that the appraisal of the marital property be made as of "the time [my home] was unlawfully taken from me, I wish to be reimbursed for the rent of my home for the 28 months I was not allowed there." Finally, father again requested "modification of the restraining order unlawfully placed on me on 12/31/03. I wish the release to me of my firearms." Father made an emotional appeal to restore to him the privilege of wildfowl hunting, and taking his sons to "'bag' their first honker."

Mother filed a responsive declaration on August 2, 2005. The register of actions shows that objections to the court's statement of decision were filed on August 15, 2005. The court apparently held trial on the issues of custody, visitation, support and other claims in September and October 2005, and on November 23, 2005, denied the OSC.

On December 13, 2005, father filed another OSC to modify child custody and visitation, and requested ex parte injunctive relief. This pleading is not included in the record on appeal. Mother apparently responded with her own OSC to modify visitation, and to institute supervised visitation for father, and filed an additional OSC for contempt against father. After several mediation appointments, these matters were heard in May 2006. Minors' counsel filed a declaration in March 2006, which is not included in the record, and a supplemental declaration on May 3, 2006, which is. She reported that J.G. "requested and I assured him that I would advise the court that he requests his custody be awarded to his father. [¶] A strong note that I ask the court to make, however, is another statement that [J.G.] made that is very telling. He states that what he really wants more than anything is that the war between his parents stop. He believes that the only way the war will stop is if custody is awarded to his father. There is nothing the minor wants more than the war to stop between his parents for which he feels that he is the casualty."

The court heard the contempt proceedings and imposed a sentence including probation terms. It appears that the court continued the hearing on the custody and visitation matters. However, father moved for reconsideration on June 16, 2006, and filed his own OSC for contempt against mother on July 13, 2006. The court took that contempt matter under submission on August 16, 2006. Father moved for a change of venue in September 2006.

On October 4, 2006, the court made its rulings on the issues of custody and visitation. The parties were sworn and examined. (The reporter's transcript of this hearing is not provided in the record on appeal.) The court awarded sole custody of the

remaining minor child, J.G., to mother. Father was granted supervised visitation up to 10 hours per week, plus one telephone call per week, monitored by the child's therapist. The court reserved jurisdiction over the issues of support and attorney fees.

Father quickly followed up with a new OSC for modification of custody and visitation, and reconsideration of the court's recent ruling, on October 10, 2006. The trial court held a hearing on December 28, 2006, and entered findings and an order on January 9, 2007, although neither the details of the orders nor the reporter's transcript is included in the record on appeal.

On February 22, 2007, father moved again for modification of custody, visitation and support, and requested that the court set aside its orders of October 4, 2006. He does include these moving papers in his Appellant's Appendix. Father requested that he be awarded custody of J.G. (D.H. had reached majority), an award of child support from mother, and attorney fees of over $31,000. Father again brought up the matters raised in the first restraining orders (i.e., the fabricated photographs), accusing mother of having "abused, endangered with a 12 gauge shotgun and ammunition, attempted to abandone, and neglected in various ways both sons . . . ." Father complained that, "[v]ia [mother's] own admition . . , nationwide statistics show [mother][i.e., because she herself was abused as a child] as the most likely to abuse children in our society. I can even show one son scarred for life as a direct result of [mother's] blatant neglect." Attached to his moving papers, father appended a diatribe accusing mother, her attorneys, minors' counsel, and the courts of bias, unfairness and criminal activity. He also appended a paper purporting to be D.H.'s "list of what he wanted addressed by [minors' counsel]

when he too was her client. . . . I asked [D.H.] to make a list of his concerns he said to [minors' counsel] when he was her client. Of his own volition he added the number of times he made each request. . . . Virtually none of [his] requests to [minors' counsel] has she mentioned in court."[9]

On March 5, 2007, the court held a hearing to review visitation and custody, but denied reconsideration of those matters, finding no change in circumstances. The hearing on father's motion, set for April 2, 2007, was vacated. The court ordered that father was "not to file an OSC without prior approval from the Presiding Judge allowing him to do so."

Father filed a new motion for modification of custody and visitation on April 13, 2007. Father averred in support of this motion that "[t]here are two reasons I am and will continue to file whatever it takes in achieving . . . 'the best interest of the child.'. . . [¶] First of my reasons is that there is a standing mandate . . . mandating a hearing so that many crimes against children, this court, and the public justice receive a hearing 'in the interest of justice.'" This is an apparent reference, once again, to the supposed fabrication of the photographs in support of the original restraining orders. Father accused "the first Judge to stand in contempt of her own court."

Secondly, father said, "is that like any loving caring parent I will never give up on the best interest, and health, safety, and welfare of my children." Once again, father

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[9] The "list," which is untitled, undated and unsigned, reads: [¶] 1. Talk about, way the crount belives my mother. 12 [¶] 2. Way they don't belive the Torth. 18 [¶] 3. Way they belive so many fase Lie. 7 [¶] 4. Wontony are DaD to come HoMe. 10 [¶] 5. Tiring to TaLL Torth about are mot- 9 [¶] her and Lie.. [¶] 6."

adverted to his accusations that mother had "abused, endangered with a firearm, attempted to be abandoned, and neglected" the children. Father again claimed that the fabricated photographs amounted to "crimes . . . against children," and expressed frustration that the family law court had not addressed such crimes. The hearing on father's motion was apparently vacated on May 30, 2007.

On June 26, 2007, father filed a new motion for modification of custody and visitation, and requesting injunctive orders for "harassment relief," apparently on behalf of D.H. ("Relief for [D.H.] from [mother's] harassment.") Father's recitation attached to this renewed motion began by chastising the courts: "I find it shocking that a court of law will order a parent to stop protecting his or her children." Father asserted, again, that "all evidence shows, and no one denies those children have been abused, endangered with a twelve gauge shotgun and live ammunition, attempted abandoned, and neglected in various ways. From the same [mother's] blatant neglect, one child has even required emergency hospital treatment. Leaving that child scarred for life." Father was upset that the court had not acted on "29 felony criminal acts [which were] committed in deceiving that court [i.e., the 29 staged photographs]. Especially so when in the commission of those crimes children were abused and endangered with a firearm." Father requested sole custody of J.G., and claimed that he and both sons were the victims of mother's domestic violence. Father accused the court of unwillingness to address these "crimes" because they were committed by a woman. In this pleading also, father supplemented his moving papers of June 26, 2007, with a plea "to hopefully negate the declaration of my being a vexatious litigant. I am the victim of domestic violence and abuse. My sons . . . are the

victims of child abuse, child endangerment, attempted child abandonment, and various forms of child neglect. These crimes against children, plus 29 felony criminal acts against this court have been committed by the same perpetrator [i.e., mother] in this case." Father accused minors' counsel of misleading the court, and of engineering the vexatious litigant designation to prevent the court from finding out about counsel's derelictions of duty.

Father's motion for modification was apparently stricken by the court. Father attempted to file another motion for modification, dated September 17, 2007, and date stamped October 4, 2007, but which was not filed.[10] In this motion, father again sought modification of custody, and thus relief from the orders that his visitation be supervised. Father supplemented these motion papers with a declaration accusing the court of "refus[ing] to address the well-supported truth in my case," consisting, as before of "almost 30 felony criminal acts" committed by mother (i.e., the staged photographs), and mother's "abuse, endanger[ment], attempt to abandon, and neglect" of the children. Father insisted that these matters have never "been addressed or litigated at any time." Father accused all the judicial officers in his case to have "repeatedly lied to me." Father regarded the rejection of his pleading as "confirm[ation of] my claim that the Riverside Family Law Superior Court rules in favor of many crimes against children," and that the court "has already proven that it will immediately and severely rule solely on the statements of proven liars with no support, proof, or evidence of any sort."

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[10] The Register of Actions shows entries of "Rejection Notice" for September 4, 2007, November 1, 2007, and November 9, 2007, none of which correspond to the dating of the September 17/October 4 OSC papers.

Father apparently attempted to file yet another OSC for modification of custody on October 30, 2007.[11] Father again complained of the order that his visitation be supervised (i.e., the custody order of October 4, 2006). Father's attached statement again chided the court for refusing to "address, for the first time, the abuse, endangerment, attempted abandonment, and neglect of my sons." He attached a separate statement attacking minors' counsel for alleged violations of the rules of professional conduct, and berated the court for failing to take action against counsel for these supposed lapses or derelictions.

On March 24 or 25, 2008, father noticed a motion to "question mediator," complaining that "[t]he continuing denials to be heard that I receive are the direct result of one senior mediator[']s concerted efforts in avoiding accountability for her actions and recommendations to the court." Father complained that the mediator had "evicted" him from her office when he asked her "why her actions differed from the 'duties of mediators' as outlined in the Family Code." When father wanted to cross-examine the mediator in court about her recommendations, father asserted, the mediator's next recommendation was to deny father any further hearings. He complained, "I can think of no other occupation, which a practitioner of can so readily override his or her accountability and thus free to subvert the many laws and rules governing that occupation."

In April 2008, father presented yet another OSC, this time for modification of child and spousal support. The court rejected the document on May 5, 2008, for the

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[11] This apparently corresponds to the "Rejection Notice" of November 9, 2007.

reason that, "[o]n judicial review it has been determined that, Denied for filing. Make no specific request that has not already been addressed by the court." Father appended a minute order of June 3, 2005, that neither party requested spousal support at that time, yet $300 per month was currently taken from his paycheck as spousal support. Father believed himself the "victim of some legal trickery," and complained that mother had always threatened to ruin him financially. He accused mother of abusing the domestic violence process and using the children as pawns against him for financial gain. Father set forth a laundry list of mother's alleged acts "confirming the tremendous greed that causes [mother] to do just as stated and commit 29 felony criminal acts against this court in deceiving it." He also desired to show "why sanctions against [mother] and her former counsel should be imposed."

Father then attempted on May 27, 2008 (the papers are stamped "Received" on June 2, 2008) to file a motion to recuse minors' counsel. Father demanded removal of the attorney and reimbursement of the fees she had been paid. Father again complained that minors' counsel had been given "photographic proof, victims written testimony, eyewitness written testimony," and other documents "showing the abuse, endangerment, attempted abandonment, and neglect of her clients, my children," but counsel had "[n]ever . . . made any mention of, or reference too, this court about a single of these crimes against children." Father insinuated that the courts gave preferential treatment to counsel and overlooked her misdeeds because she was a regular practitioner before the court.

On June 4, 2008, father's motion to remove the minor's attorney was evidently filed. On July 24, 2008, the court both denied the motion to remove minors' counsel, and also held a renewed hearing on the issue of declaring father a vexatious litigant.

According to the reporter's transcript of the July 24 hearing, the court had evidently earlier declared father a vexatious litigant, but the court noted that it had earlier made "a prefiling order for him,"—i.e., an order that father's pleadings be judicially reviewed before they could be filed—but "there did not appear to be . . . an opportunity for [father] to be officially found vexatious or to have a chance to contest it." The court had therefore set the matter on its own motion for an OSC to determine whether father should be declared a vexatious litigant. The court indicated that, "[w]hat happened of course when the court noticed everybody of the vexatious motion, [father], very consistent with being a vexatious litigant, filed his motion to relieve [minors' attorney] as counsel." The court then heard father's argument on the matter. Father stated that he had originally requested counsel for minors "because I want those crimes against my children addressed here." Father agreed that he had previously made the same allegations (i.e., of crimes against the children) as were raised in the current motion to remove minors' counsel. He maintained, however, that, while he had been required to address in court the accusations made against him, no one had ever "presented" to mother or made her account directly in court for the accusations against her (i.e., the staged photographs). "I have been accused of many things," father stated. "Each one of them has been addressed to me, presented to me . . . [¶] . . . [¶] . . . in this court." But "[t]o this date not one of those accusations has been presented to [mother], not the slightest." The court responded

that father had not "really answered the vexatious litigant question so much as again rehashed your allegations that you feel like crimes have been committed against you and your son and that the court hasn't heard that. [¶] The dates I read, one, two, three, four, five, six, seven, this would be the eighth filing in a year period of time, those eight filings have all been litigated. They have all been ruled on by a court. [¶] Your avenue was appeal." Father retorted that "It sounds like [the court's ruling is] already made. But in your file are 29 photographs." The court found father to be a vexatious litigant, and it would continue to review his filings. The court also denied the motion to remove minors' counsel.

Before the day was out, father presented a motion for reconsideration of the vexatious litigant finding. He complained that he was not given notice that the vexatious litigant declaration would be considered at the hearing. He also asserted that, "the vexatious litigant accusation is false," and reiterated yet again that "[i]f the issues, and their clear and convincing proof, had been discussed just once in this court, as declared by this court, then it would show that this court grants sole custody of a child to the parent proven to abuse, endanger, attempt to abandon, and neglect that child." The court denied the motion for reconsideration, and rejected it for filing.

On September 24, 2008, father filed a notice of appeal from the orders of July 24, 2008.

ANALYSIS

I. Father Failed to Appeal the Custody and Visitation Orders of October 4, 2006

Father's notice of appeal indicates that he appealed from the vexatious litigant finding, i.e., the order of July 24, 2008. He filed his notice of appeal on September 24, 2008.

The notice of appeal fails to reference, or to indicate any attempt to appeal from, the orders of October 4, 2006, awarding custody of the younger son to mother and ordering supervised visitation for father. "While a notice of appeal must be liberally construed, it is the notice of appeal which defines the scope of the appeal by identifying the particular judgment or order being appealed." (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 967, citing Cal. Rules of Court Rule 8.100(a)(2).) Father's notice of appeal does not mention the order of October 4, 2006. Review of that order is therefore not within the scope of the notice of appeal.

In addition, any purported appeal from the custody and visitation orders of October 4, 2006, is untimely. California Rules of Court, rule 8.104(a) provides that the normal time for appeal is the earliest of: "(1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed; [¶] (2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (3) 180 days after entry of judgment." Father's notice of appeal was untimely by any of these standards as to the orders of October 4,

2006. We have no jurisdiction to review any order from which a timely appeal was not taken. (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 967.)

Because the October 4, 2006, orders were not within the scope of the notice of appeal, and because any such appeal was untimely, any error alleged to have taken place with respect to the custody and visitation orders of October 4, 2006, is not properly before this court.

Father urges that his appeal should be considered timely because "for about two years [he] has been unjustly denied access to the courts. (constructive filing) [He] previously was under the belief the appeals court did not hear 'child dependency' cases. . . . Cost has also been a limiting factor." None of these supposed reasons excuses the failure to appeal from the visitation orders of October 4, 2006. First, as to the allegation of having been "unjustly denied access to the courts," the family law court did not impose any restriction on father's filings until March 5, 2007, many months after the ruling complained of. Father was not prevented from filing a timely appeal to the custody and visitation order. Second, the appellate court hears appeals of any appealable order. Code of Civil Procedure section 904.1, subdivision (a)(10), provides that any order made appealable under the Family Code is an appealable order, and Code of Civil Procedure section 904.1, subdivision (a)(2), makes appealable any order after a final judgment. A final custody order is an appealable order. (Cf. *Muller v. Fresno Community Hosp. & Medical Center* (2009) 172 Cal.App.4th 887, 898 [final determination of a collateral matter is appealable]; *Sarah B. v. Floyd B.* (2008) 159 Cal.App.4th 938, 940 [final order regarding child custody is appealable]; *Enrique M. v.*

Angelina V. (2004) 121 Cal.App.4th 1371, 1378 [order entered after a hearing on custody issues is an appealable final judgment as to custody].) Third, costs may be waived on a proper application to the court. (*Martin v. Superior Court* (1917) 176 Cal. 289 [courts have the inherent authority to allow indigent parties, on a proper showing, to proceed without payment of court fees and costs].) Father has presented no excuse for failing to raise the issue by a timely appeal.[12] The custody and visitation orders are not before us for review, and we do not pass upon them.

II. The Vexatious Litigant Order Should Be Affirmed

Nominally, father has appealed from the order of July 24, 2008, declaring him a vexatious litigant. The bulk of his brief consists, however, of a reiteration of the claims

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[12] Father attempts to argue the merits of the court's October 4, 2006, orders. He contends that the only reason he was ordered to have supervised visitation was the allegation that he had involved the children in the litigation. He complains that no evidence was presented to support the recommendations of minors' counsel to the court, and that this necessarily constitutes extrinsic fraud on the part of minors' counsel.

On the one hand, father has failed to present a proper record on appeal. The reporter's transcript of the custody hearing, where evidence was taken, is not included. We thus have no idea what evidence was presented at trial on the issue of supervised visitation in general or father's having involved the children in the litigation in particular.

On the other hand, as inadequate as the appellate record is, the documents which father does manage to provide in his appellate appendix are not as favorable to him as he supposes. Father's own papers tend to show, for example, that he has involved the children in the divorce proceedings. He has enlisted the children to write letters to the court complaining about mother's having staged the photographs. Years later, he has continued to revisit the issue with them, encouraging D.H. to produce a list of grievances against minors' counsel (consisting of partially incoherent, repetitive accusations that mother lies to the court, but that counsel will not relay these concerns to the court), and creating tape recordings of the children repeating complaints that mother is a liar and that she staged the shotgun photographs. He has also told the children that he will "tell them the truth when this is over," without any appearance of understanding that such remarks do keep the children involved in the hostilities between the spouses.

Nevertheless, the merits of the custody and visitation orders are not properly before us, and we do not consider them.

made multiple times in many proceedings below that mother "took their youngest son . . . around the house with a 12 gauge shotgun and live ammunition and fabricated 29 photographs [to use as] evidence that [father] is careless with firearms." It no doubt rankles that father believes false or staged evidence was used in the initial restraining order proceedings, but father was fully able to present his arguments on the topic to the trial court, and on the strength of his efforts the trial court set aside the original restraining orders. In the rehearing on the restraining orders, the court expressly indicated that it did not believe mother's version of the events concerning the shotgun and did not rely on that incident. It reimposed restraining orders, however, based on other matters.

Despite father's preoccupation with the restraining order proceedings of February (TRO), April (permanent orders), August (stipulation), and December (setting aside the stipulation and permanent orders, setting rehearing on restraining orders and issuing new permanent restraining orders), those matters occurred six years ago, and have never been appealed. Any appeal at this stage on the issue of the restraining orders is untimely. As with the custody and visitation orders, any matters concerning the restraining orders are not properly before this court. (*Morton v. Wagner, supra*, 156 Cal.App.4th at p. 967; Cal. Rules of Court, rules 8.100(a)(2), 8.104(a).)

Nevertheless, to see mother prosecuted or punished for these alleged felony crimes appears to be father's consuming passion. Because she has never been taken to task by the family law court for this impropriety, father apparently takes the position that his claims have never been heard or ruled upon by the court. Because, according to father,

his issues have never been heard "for the **FIRST** time," he cannot be a "vexatious litigant" for repeatedly litigating the same issue many times.

To the contrary, however, father's evidence was received, was heard, was ruled upon and was credited by the trial court. That is why the trial court set aside the original restraining orders. That is why the court stated that it expressly disregarded those aspects of mother's evidence when it reheard the motion for restraining orders. Father himself says that he has made "no less than 10 attempts" on and after December 31, 2003, to have the court address mother's alleged improprieties. By his own admission, then, father has persevered in bringing the same matter before the court on multiple occasions, even though he actually won on the issue below. That is the essence of vexatious litigation.

To address the procedural posture of the appeal more formally, we note that a trial court's ruling that a litigant is a vexatious litigant is reviewed on appeal for substantial evidence. (*Morton v. Wagner*, *supra*, 156 Cal.App.4th at p. 969.) Thus, we presume the order declaring a litigant vexatious is correct and imply any findings necessary to support the judgment. (*Holcomb v. U.S. Bank Nat. Ass'n.* (2005) 129 Cal.App.4th 1494, 1498-1499.) As noted, although there are many gaps in the record father has provided on appeal, there is well more than sufficient evidence, largely supplied and admitted by father himself, to support the court's determination.

Father brings up an additional procedural matter: he argues there was no notice of the vexatious litigant hearing. The court stated on the record, however, that it had sent notice to the parties on its own motion. Father points to the remarks of minors' counsel that she was unaware of the additional reason for the hearing on July 24, 2008 (the

hearing on father's motion to remove minors' counsel was also scheduled for the same date), but the record provided does not unequivocally demonstrate that no notice was given. As we have previously indicated, the record on appeal is lacking in many respects. "Error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "The party appealing has the burden of overcoming the presumption of correctness. For this purpose, it must provide an adequate appellate record demonstrating the alleged error. Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. [Citation.]" (*Defend Bayview Hunters Point Committee v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860.)

Moreover, under the California Constitution, article VI, section 13, no judgment shall be set aside for evidentiary, pleading or procedural error unless the error resulted in a miscarriage of justice. Father cannot demonstrate a miscarriage of justice with respect to the finding that he is a vexatious litigant. Numerous filings and attempted filings included in the record on appeal have brought up father's objections to the 29 photographs, even years after he prevailed on the issue of their credibility to establish the restraining orders against him. Although father complains that he was not provided notice of the hearing on the vexatious litigant declaration, he was present and had a full opportunity to argue. Nowhere does he indicate what further evidence could have been brought to bear on the issue if proper notice had been given. Instead, his argument consists solely of yet another presentation of the same six-year-old issue. Father himself admits he has brought up the identical issue at least 10 times (even after he already prevailed). He is still angry, and even "stands defiant" in refusing to desist from

repeatedly litigating matters that have already been decided. This is the essence of frivolousness (Code Civ. Proc., § 391, subd. (b)(3)); father has not shown the declaration that he is a vexatious litigant to have been a miscarriage of justice.

DISPOSITION

The order declaring father a vexatious litigant is affirmed. Father failed to properly file a timely appeal from the final custody orders of October 4, 2006, and we do not consider any issues with respect to those orders.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKINSTER
Acting P. J.

We concur:

/s/ KING
J.

/s/ MILLER
J.